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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91196599
Party	Plaintiff Jackel International Limited
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial Nos.: 85/003,453, 85/003,408, 85/003,358

By: Admar International Inc.

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Marks: SIP IT UP, DURA SPOUT, SPORTSTER

Jackel International Limited,

Opposer,

v.

Admar International Inc.,

Applicant.

Opposition Nos. 91196598, 91196597,
91196599

MOTION TO SUSPEND

Opposer Jackel International Limited (“Jackel” or “Opposer”) hereby requests pursuant to Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a), the suspension of the above-identified opposition proceedings (“the Oppositions”) until such time as there is a final ruling in civil case number 10-CV-00706, *Mayborn USA, Inc. and Jackel International, Limited v. Luv N’ Care, Ltd., and Admar International, Inc.*, which is currently pending in the United States District Court for the District of Connecticut (“the Lawsuit”). A copy of the Second Amended Complaint in the Lawsuit is enclosed as Exhibit A.

The Lawsuit involves all of the parties, marks, and issues currently before the Board in the Oppositions. For example, the Lawsuit includes issues of whether the referenced marks are registered and whether Defendants unfairly and in bad faith applied to register the marks, which are identical or nearly identical to Opposer’s own marks, to interfere with Jackel’s expansion in the United States.

While the issue of suspension falls within the discretion of the Board, the Trademark Trial and Appeal Board (“TTAB”) Manual of Procedure (“TBMP”) notes that “ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board.” TBMP § 510.02(a). Similarly, Trademark Rule 2.117(a) states that:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

37 C.F.R. 2.117(a).

Thus, it is standard practice for the Board to suspend opposition proceedings when a lawsuit “will have a bearing on the issues before the Board.” TBMP § 510.02(a). *See Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (TTAB. 1971) (granting motion to stay proceeding pending the outcome of civil litigation).

Here, the court’s findings in the Lawsuit will have a bearing on the issues before the Board. A failure to stay the Oppositions would force the parties to duplicate their efforts and litigate the same issues twice. This would present the possibility of potentially inconsistent opinions, and would waste the resources of the Board, the court and the parties.

For the foregoing reasons, Jackel requests that the Board suspend all proceedings in the Oppositions pending final resolution of the Lawsuit.

Date: October 19, 2010

Respectfully submitted,

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Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MAYBORN USA, INC., AND)
JACKEL INTERNATIONAL, LIMITED,)

Plaintiffs,)

v.)

Civil Action No. 10-CV-00706

LUV N' CARE, LTD., AND)
ADMAR INTERNATIONAL, INC.,)

Defendants.)

SECOND AMENDED COMPLAINT

Plaintiffs Mayborn USA, Inc. ("Mayborn") and Jackel International Limited ("Jackel") (together, "Plaintiffs") for their amended complaint against defendants, Luv N' Care, Ltd. ("Luv N' Care") and Admar International, Inc. ("Admar") (collectively "Defendants"), allege as follows:

PARTIES

1. Plaintiff Mayborn USA, Inc. is a corporation duly organized and existing under the laws of the State of New York and having its principal place of business at 175 Post Road West, Westport, Connecticut 06880.

2. Plaintiff Jackel International Limited is a corporation organized and existing under the laws of the United Kingdom and having its principal place of business at Dudley Lane, Cramlington, Northumberland NE23 7RH.

3. On information and belief, defendant, Luv N' Care, Ltd. is a corporation duly organized and existing under the laws of the State of Louisiana and having its principal place of

business at 3030 Aurora Avenue, Monroe, Louisiana 71201. Its registered agent is N. Edward Hakim having an address of 200 Sabine Street, Monroe, Louisiana 71201.

4. On information and belief, defendant Admar International, Inc. is a corporation duly organized and existing under the laws of the State of Delaware and having its principal place of business at 309 Rehoboth Avenue, Rehoboth Beach, Delaware. Its registered agent is Daniel P. Myers, II, having an address of 309 Rehoboth Avenue, Rehoboth Beach, Delaware.

JURISDICTION AND VENUE

5. This is an action for cybersquatting; trademark, trade dress, and design patent infringement; and unfair competition. The action seeks monetary and injunctive relief including a declaration that Defendants have or will violate Plaintiffs' rights as described herein and an order requiring, among other things, Defendants to expressly abandon certain federal trademark applications.

6. This Court has jurisdiction pursuant to 15 U.S.C. §1121 (Lanham Act), 28 U.S.C. §1331 (federal question), 28 U.S.C. §1338 (trademarks) and 28 U.S.C. §1367 (pendent state claims).

7. This Court has personal jurisdiction over Defendants because Defendants committed tortious acts in the State of Connecticut, which constitute the subject matter of this action, and have transacted business within the State of Connecticut.

8. This Court also has personal jurisdiction over Defendants pursuant to Section 33-929 of the Connecticut General Statutes, because these tortious acts and business transactions constitute the subject matter of these actions.

9. Venue is proper in the District of Connecticut under 28 U.S.C. §1391 because, *inter alia*, Defendants' tortious activities have caused damage to Plaintiffs, Mayborn resides in this judicial district, and Defendants are doing business in this judicial district.

10. Defendant Admar is the owner of two United States trademarks applications, Serial Nos. 85/003,408 and 85/003,453, which violate Plaintiffs' trademarks and thus is a necessary party.

FACTUAL BACKGROUND

Plaintiffs And Their Products

11. Plaintiffs market and sell high-quality, innovative baby accessories, including bottles, sippy cups, pacifiers and feeding products, throughout the world.

12. Jackel is recognized as a leader in the baby accessories industry.

13. Jackel is the owner of various intellectual property used in connection with its products.

14. Mayborn is the exclusive distributor in the United States for these products and the exclusive United States licensee for the Jackel intellectual property described below ("Plaintiffs' IP").

15. Plaintiffs have expended substantial resources developing and promoting the Plaintiffs' IP and the Plaintiffs' IP is of inestimable value.

16. As a result of Plaintiffs' efforts, consumers have come to recognize the Plaintiffs' IP as designating Plaintiffs' high-quality, innovative products.

The Plaintiffs' IP

TOMMEE TIPPEE Trademarks And Products

17. For nearly 50 years, Jackel and its predecessors-in-interest have been using TOMMEE TIPPEE and variations of that trademark to identify and distinguish their baby feeding products, namely, baby bottles, cups and pacifiers, from the goods and services of others.

18. Since 1965, Jackel and its TOMMEE TIPPEE products have earned a reputation for clever ideas, product quality and simply intuitive designs that promote natural development at every age, stage and feeding need. Jackel's smart ideas have earned the company top ranks in the prestigious Mother and Baby awards — a head-to-head assessment of competitive products voted on by mothers. In fact, the TOMMEE TIPPEE CLOSER TO NATURE line of baby bottles has been chosen as Great Britain's best baby bottle, winning the Gold Award in 2006/7, 2008/9 and again in 2009/10.

19. Today, TOMMEE TIPPEE innovations provide comfort for babies and peace of mind for parents in 48 countries.

20. Plaintiffs' products are known by the purchasing public throughout the world as being of the highest quality and a trusted brand.

21. Jackel is the owner of numerous trademark registrations for the mark TOMMEE TIPPEE and marks containing the terms TOMMEE TIPPEE.

22. For example, Jackel owns incontestable U.S. Trademark Registration No. 2,209,354 for TOMMEE TIPPEE, which the United States Patent and Trademark Office ("PTO") issued on December 8, 1998. This registration covers bottles and cups in International Class 21. A copy of the registration certificate for the mark is attached as Exhibit 1.

23. Jackel also owns incontestable U.S. Trademark Registration No. 2,209,344 for TOMMEE TIPPEE, which the PTO issued on December 8, 1998, for spoons and nail clippers in International Class 8 and pacifiers for babies and baby bottles in International Class 10. A copy of the registration certificate for this mark is attached as Exhibit 2.

24. Additionally, Jackel owns U.S. Trademark Application Serial Nos. 77/660,125 and 77/713,609 for TOMMEE TIPPEE and TOMMEE TIPPEE and design, respectively, for, *inter alia*, children's feeding instruments, feeding bottles and cups. Copies of printouts from PTO database showing the status of these applications are attached as Exhibits 3 and 4, respectively.

25. Jackel also owns several other registrations including, for example, United Kingdom Trademark Registration Nos. 1,244,551 and 2,027,608 for marks containing the terms TOMMEE TIPPEE in association with various feeding products. It is also the owner of Community Trademark Registration Nos. 7,314,784, 3,388,683 and 2,384,667, to identify baby feeding products.

26. Plaintiffs' use of the TOMMEE TIPPEE marks as described above (the "TOMMEE TIPPEE Marks") has been and continues to be widespread, extensive, and nationally and internationally recognized by the public.

27. The distinctive TOMMEE TIPPEE Marks are well known in the field of baby feeding products. For example, the baby feeding products advertised and sold under the TOMMEE TIPPEE Marks are the number one feeding products brand in the United Kingdom.

28. In 2009, the baby feeding products sold and advertised under the TOMMEE TIPPEE Marks were recognized as a United Kingdom "Superbrand." To qualify as a "Superbrand," over 2,000 British consumers voted the products sold under the TOMMEE

TIPPEE Marks as one of the United Kingdom's top 500 brands. The TOMMEE TIPPEE brand is ranked just above PLAY-DOH®. Therefore, this award is a recognition of the fame the baby feeding products under TOMMEE TIPPEE Marks have garnered from the public as a result of their quality, reliability and distinctiveness.

29. The readers of PRIMA MAGAZINE awarded the number one product in the Best Bottle category and Best Feeding Range category to two baby feeding products used in association with the TOMMEE TIPPEE Marks.

30. Jackel and its predecessors-in-interest have spent significant amounts of time, effort, money and resources in advertising and promoting goods and services offered and sold under the TOMMEE TIPPEE Marks.

31. All of Jackel's products sold worldwide are sold under the TOMMEE TIPPEE Marks, apart from those of its products which are supplied under retailers' own label.

32. All of the products Mayborn distributes in the United States are under the TOMMEE TIPPEE Marks, including:

"CLOSER TO NATURE" Products

33. In April 2006, Jackel launched in the United Kingdom a line of unique bottle and nipple products directed toward infant feeding and designed to help infants successfully switch back and forth between breast and bottle feeding. Since 2007, Jackel expanded this line of products to include unique cups, pacifiers, breast pumps and accessories.

34. Jackel markets and sells these products under the trademark CLOSER TO NATURE.

35. In January 2010, Mayborn began selling the CLOSER TO NATURE line of baby feeding products in retail stores throughout the United States, including within this judicial district.

36. Both Jackel and Mayborn sell the CLOSER TO NATURE products in distinctive packaging depicted in Exhibit 5, which consists of a rectangular box in both dark and light shades of gray; and on the front display panel, a TOMMEE TIPPEE trademark near the upper left hand corner, a picture of the product below and to the right of TOMMEE TIPPEE, and, on most CLOSER TO NATURE products, a circle containing the words “BPA free” (the “CLOSER TO NATURE Trade Dress”).

37. The CLOSER TO NATURE range of products is for the newborn market, and the CLOSER TO NATURE Trade Dress is very distinctive as against packaging of competitor products generally, since no other competitors of Jackel or Mayborn have packaging that is gray. Instead, with the exception of Defendants’ recently redesigned competitive products, most competitor packaging aimed at newborns is white and/or pastel colored. Feeding products for infants and toddlers beyond newborn are not gray either but are usually brightly colored, which adds to the distinctiveness of the CLOSER TO NATURE Trade Dress.

38. Plaintiffs’ CLOSER TO NATURE Trade Dress is unique in the marketplace for these products. See Exhibit 6 depicting an example planogram of a retail store shelf space.

“CLOSER TO NATURE” Pacifier

39. Jackel is the owner of U.S. Design Patent No. US D599,026 S for a unique pacifier sold in the United Kingdom under the CLOSER TO NATURE and PURE brand names, and sold in the United States under the CLOSER TO NATURE and CLEAR SHIELD brand

names (in each case the “CTN Pure Pacifier”). A copy of the patent is attached hereto as Exhibit 7 and images of the CTN Pure Pacifier are attached hereto as Exhibit 8.

40. In June 2008, Jackel began selling the CTN Pure Pacifier in the United Kingdom. The CTN Pure Pacifier has been very successful in just under two years.

41. In January, 2010, Mayborn began selling the CTN Pure Pacifier in retail stores throughout the United States, including within this judicial district. Mayborn has been very successful with the CTN Pure Pacifier in the United States.

42. The CTN Pure Pacifier is Plaintiffs’ best selling product in the category.

“EXPLORA” Products

43. In June 2009, Jackel launched its EXPLORA line of products in the United Kingdom, which focus on progressively staged drinking and feeding products to aid in the transition from first sips to independent feeding. A depiction of several EXPLORA products is attached hereto as Exhibit 9 (the “EXPLORA Products”).

44. The EXPLORA sippy cups utilize a superior Advance-Flo™ technology, which guarantees easier, super sensitive drinking without spills or leaks. The EXPLORA sippy cups are progressively staged to help children transition through all their drinking phases and needs with specific grips to fit little fingers and unique spouts to meet the needs of every age and support natural oral development. The superior Advance-Flo™ technology used in these EXPLORA sippy cups was not commissioned by the Plaintiffs, but was developed by an independent third party who subsequently licensed that technology to the Plaintiffs.

45. The EXPLORA Products are intuitively designed for less mess and stress.

46. Some of the EXPLORA Products include a unique straw feature, which allows for the easy flow of liquid, while at the same time prevents against leaks and spills. The EXPLORA Products' straws consist of a straw with a valve.

47. In January 2010, Mayborn began selling an EXPLORA line of baby feeding products in retail stores throughout the United States, including within this judicial district.

"TIP IT UP" Products

48. In March 2010, Jackel launched in the United Kingdom a unique line of sippy cups designed with a superior Lip Touch™ Technology in the soft silicone spout, which allows for the easy flow of liquid when gentle pressure is applied by a child to the spout while at the same time prevents leaks and spills from the spout when not in use by a child. The technology used in these sippy cups was not commissioned by the Plaintiffs, but was developed by an independent third party who subsequently licensed that technology to the Plaintiffs.

49. A depiction of the TIP IT UP products is attached hereto as Exhibit 10.

50. Jackel is the owner of various trademark registrations and applications for TIP IT UP throughout the world, including U.S. Application Serial No. 77/857,399, to identify, among other things, bottles, cups and feeding utensils in Classes 10 and 21, and Community Trademark registration No. 8418717 (the "TIP IT UP Mark"). In the United Kingdom Jackel has had continuous use of the TIP IT UP Mark in different cup ranges since 2000. See Exhibit 11.

51. Mayborn is the exclusive United States distributor of these products, and all others described herein, and such products are or are intended to be sold in retail stores throughout the United States.

DURA SPOUT

52. Since December 2009, Mayborn has used the DURA SPOUT trademark (the “DURA SPOUT Mark”) in the United States on and in connection with the EXPLORA Products.

SPORTSTER

53. Since at least as early as 2006, Jackel has used the SPORTSTER trademark (the “SPORTSTER Mark”) in the United Kingdom on and in connection with cups.

54. In addition, Jackel also uses its SPORTSTER mark on its United Kingdom website, which is accessible in the United States.

55. On September 23, 2010, Jackel filed with the PTO an application to register SPORTSTER.

SUPER SIPPER

56. Since at least as early as 2002, Jackel has used the SUPER SIPPER trademark (the “SUPER SIPPER Mark”) in the United Kingdom on and in connection with cups.

57. In addition, Jackel also uses its SUPER SIPPER mark on its United Kingdom website, which is accessible in the United States.

58. On September 23, 2010, Jackel filed with the PTO an application to register SUPPER SIPPER.

The Tommee Tippee Website

59. On December 10, 2009, in time for the launch of the TOMMEE TIPPEE products in the United States in January 2010, Mayborn launched its United State’s website at <http://www.tommeetippee.us> with the TOMMEE TIPPEE DESIGN as defined below. The website has a distinctive theme, layout and color scheme, which was designed to complement the unique CLOSER TO NATURE Trade Dress (the “TOMMEE TIPPEE DESIGN”). Attached

hereto as Exhibit 12 is a printout of the United States website depicting the TOMMEE TIPPEE DESIGN.

Defendants And Their Products

60. Luv N' Care is also a distributor of baby feeding products and is a competitor of Plaintiffs. Its products are sold under the trade name "NUBY" and "NUBY NATURAL TOUCH" ("NUBY Trademarks") in the United States, Europe and elsewhere.

61. On information and belief, the NUBY trademarks are owned by Admar. Admar is listed as the owner of several trademark applications in the United Kingdom and the Community Trademark Office for the marks NUBY and NUBY NATURAL TOUCH in association with various baby feeding products. Luv N' Care, however, is listed as the owner of one trademark application in the United Kingdom for the mark NUBY in association with baby feeding products.

62. In 2003, Luv N' Care was able to enter the baby feeding products industry in the United Kingdom, Ireland and Gibraltar through a relationship with Jackel. As a result of Jackel's fame and notoriety in these territories, Jackel was able to introduce Luv N' Care's products in many retailers throughout the United Kingdom, Ireland and Gibraltar. Jackel was the exclusive distributor of NUBY products in the United Kingdom, Ireland and Gibraltar. All of the packaging for the products sold in these territories were branded TOMMEE TIPPEE and also displayed the NUBY or NUBY NATURAL TOUCH marks.

63. In 2008, after the expiration of the 2003 contract between Luv N' Care and Jackel, the parties entered into a new contract for Jackel to distribute the TOMMEE TIPPEE/NUBY co-branded products in the territories (the "2008 Agreement").

64. In August 2009, Luv N' Care served a six month notice to terminate the 2008 Agreement. The notice of termination was without cause. The contractual relationship therefore ceased in February 2010.

Defendants' Unlawful Conduct

65. Since at least the termination of the Agreement, without Jackel's consent, Defendants have attempted to trade off the goodwill of the Plaintiffs' IP and to generally compete unfairly.

66. Despite actual knowledge of the use by Plaintiffs of their DURA SPOUT Mark, on March 31, 2010, Admar filed with the PTO an intent to use based federal trademark application (Serial No 85/003,408) for DURA SPOUT for cups adapted for feeding babies and children in Class 10.

67. Despite this knowledge of Plaintiffs' use of DURA SPOUT, Mr. Hakim signed a declaration dated March 31, 2010, under penalty of perjury filed with Admar's trademark application stating that he "believes the applicant to be the owner of the trademark/service mark sought to be registered, or... that applicant...[is] entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive." See Exhibit 13.

68. Admar's DURA SPOUT mark is identical to Plaintiffs' DURA SPOUT Mark and both are used or intended to be used with the same or similar types of products. If Defendants mark were registered, or if Defendants were to use DURA SPOUT, consumers would be likely to be confused as to the source or origin, affiliation, association, sponsorship or

connection between Plaintiffs' and Plaintiffs' products on the one hand and Defendants and their products on the other.

69. Despite actual knowledge of Plaintiffs' TIP IT UP Mark, on March 31, 2010 Admar filed with the PTO an intent to use based federal trademark application, Serial No. 85/003,453, for SIP IT UP to identify products in Class 10, just like Plaintiffs' TIP IT UP Products, namely "cups adapted for feeding babies and children."

70. For this application, too, Mr. Hakim signed a declaration stating that "no other person, firm, corporation or association has the right to use the mark in commerce, either in identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive." See Exhibit 14.

71. If Defendants SIP IT UP mark were registered, or if Defendants were to use SIP IT UP, consumers would be likely to be confused as to the source or origin, affiliation, association, sponsorship or connection between Plaintiffs' and Plaintiffs' products on the one hand and Defendants and their products on the other.

72. Despite actual knowledge of Plaintiffs' SPORTSTER Mark, on March 31, 2010 Admar filed with the PTO an intent to use based federal trademark application, Serial No. 85/003,358, for SPORTSTER to identify products in Class 10, virtually identical to Plaintiffs' products used in connection with SPORTSTER, namely "cups adapted for feeding babies and children."

73. For this application, too, Mr. Hakim signed a declaration stating that "no other person, firm, corporation or association has the right to use the mark in commerce, either in identical form thereof or in such near resemblance thereto as to be likely, when used on or in

connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.” See Exhibit 20.

74. Defendants applied to register SPORTSTER in a bad faith attempt to block Plaintiffs’ expansion of products bearing the SPORTSTER Mark into the United States.

75. Despite actual knowledge of Plaintiffs’ SUPER SIPPER Mark, on April 1, 2010, Nuby U.K. L.L.P. (“Nuby U.K.”) filed with the United Kingdom Intellectual Property Office an application, serial number 2,543,681, to register SUPER SIPPER for a wide range of baby products in the United Kingdom. This application was filed within one day of the DURA SPOUT, SIP IT UP and SUPER SIPPER applications filed by Defendants in the United States.

76. Nuby U.K. currently uses SUPER SIPPER on its products in the United Kingdom.

77. Defendant Luv N’ Care, Ltd. is affiliated and controls Nuby U.K. In fact, Nuby U.K.’s website’s “Terms and Conditions” page states that its website “is provided by Luv N’ Care, Ltd. (the owner of Nuby UK LLP...).” Moreover, the packaging on some of Nuby UK’s products states that the trademark SUPER SIPPER, among others, is owned by defendant Luv N’ Care, Ltd.

78. From approximately February 2008, Luv N’ Care set up a small office in Sunderland in the United Kingdom. After Luv N’ Care served six (6) months notice to terminate the 2008 Agreement without cause in August 2009, Luv N’ Care formed its own limited liability partnership organization in Sunderland to distribute NUBY branded products (“LNC UK”). Instead of building its United Kingdom operation based on its own ingenuity and creativity, LNC UK hired several key employees of Jackel. In particular, in approximately February 2008, LNC UK hired Jackel’s Innovation, New Product Development and Marketing Manager, Maria

Burnell, and later, other members of her then team at Jackel, apparently to improperly benefit from Plaintiffs' trade secrets, business plans, confidential information and resources — financial, creative and otherwise — to which the former employees had access. In total, there are six (6) former employees of Jackel currently employed at LNC UK.

79. Defendants have recently launched a pacifier that is substantially similar to Plaintiffs' unique and innovative CTN Pure Pacifier. Attached hereto as Exhibits 8 and 15 are images of the CTN Pure Pacifier and Luv N' Care's pacifier, respectively. An ordinary observer familiar with the pacifier marketplace would be deceived into believing that Luv N' Care's pacifier is substantially similar to or the same as the CTN Pure Pacifier.

80. Shortly after Jackel launched its CLOSER TO NATURE Trade Dress, Defendants followed suit with a redesign of their Natural Touch packaging. Attached hereto as Exhibit 16 is a depiction of the Natural Touch packaging prior to and after Defendants changed their packaging to mimic the CLOSER TO NATURE Trade Dress.

81. Defendants revised the packaging of their Natural Touch products to look like the CLOSER TO NATURE Trade Dress. Plaintiffs' competitors in the newborn market, with the exception of Defendants, offer similar products in white packaging with touches of other colors. With the exception of Defendants, no other competitors use trade dress even remotely similar to Plaintiffs.

82. Defendants revised packaging copies many of the elements of the distinctive CLOSER TO NATURE Trade Dress and is strikingly similar to it. Like the CLOSER TO NATURE Trade Dress, the Natural Touch packaging is now gray. Defendants' package change occurred after Plaintiffs entered the market with the CLOSER TO NATURE Trade Dress and

with knowledge of the same. Attached as Exhibit 17 is a side by side image of one of the CLOSER TO NATURE products and the competitive Natural Touch product.

83. On information and belief, Defendants, through other entities, have used the TOMMEE TIPPEE Marks in association with at least two domain names, tommeetippeenubycups.com and tommeetippeenubycups.co.uk, to advertise and offer for sale their baby feeding products. On information and belief, the tommeetippeenubycups.com and tommeetippeenubycups.co.uk domain names are controlled by Luv N' Care. A printout of the tommeetippeenubycups.com website is attached hereto as Exhibit 18.

84. On information and belief, the websites located at the tommeetippeenubycups.com and tommeetippeenubycups.co.uk domain names recently began advertising Defendants' NUBY baby feeding products. When various links are clicked on these websites including, but not limited to, the "Newborn," "Drinking," "Soothing," "Teething," "Weaning & Tableware," and "Privacy Policy" sub-menu links, the user was directed to Defendants' United Kingdom website for baby feeding products.

85. Subsequent to the start of this lawsuit, Luv N' Care denied responsibility for diverting internet traffic to its own websites by using the TOMMEE TIPPEE Marks, but the domain names are no longer active. Discovery likely will reveal that Luv N' Care or a related entity directed the improper use of the TOMMEE TIPPEE Marks in connection with Luv N' Care's website because there appears to be no other entity with a motive to do so.

86. Defendants have committed additional acts, which separately and together, constitute unfair competition and unlawful business practices.

87. For example, shortly after Plaintiffs launched their United States website utilizing the TOMMEE TIPPEE DESIGN, Defendants launched a site in the United Kingdom, which mimics the TOMMEE TIPPEE Design. See attached Exhibit 19.

88. Defendants have attempted to divert traffic from Plaintiffs' Facebook page to the NUBY Facebook page by soliciting "fans" of the TOMMEE TIPPEE Facebook page immediately after an individual becomes a TOMMEE TIPPEE "fan."

Effect Of Defendants' Activities On
Plaintiffs And The Consuming Public

89. Defendants' unauthorized use of Plaintiffs' IP in the manner described above is likely to cause confusion or mistake or deceive Plaintiffs' customers and potential customers and other relevant members of the public, at least as to an affiliation, connection, or association between Plaintiffs and Defendants, or as to the origin, source, sponsorship, or approval by Plaintiffs of Defendants' products.

90. Defendants' unauthorized use of the Plaintiffs' IP falsely indicates to the purchasing public that Defendants' products originate with Plaintiffs, or are affiliated, connected, associated, sponsored, endorsed, or approved by Plaintiffs, or are in some manner related to Plaintiffs or the Plaintiffs' Products.

91. Defendants' unauthorized use of the Plaintiffs' IP falsely designates the origin of Defendants' products and falsely and misleadingly describes and represents facts with respect to Defendants and Defendants' products.

92. Defendants' unauthorized use of the Plaintiffs' IP enables Defendants to trade on and to receive the benefit of the goodwill in the Plaintiffs' IP, which Plaintiffs and their predecessors in interest have developed over many years. Defendants' unauthorized use also

enables them to gain acceptance for their own goods, not solely on their merits, but on the reputation and goodwill of Plaintiffs and the Plaintiffs' IP.

93. Defendants' unauthorized use of the Plaintiffs' IP unjustly enriches Defendants at Plaintiffs' expense.

94. Defendants' unauthorized use of the Plaintiffs' IP deprives Plaintiffs of the ability to control the nature and quality of goods provided under Plaintiffs' IP and places the valuable reputation and goodwill of Plaintiffs in the hands of Defendants, over which Plaintiffs have no control.

95. Plaintiffs have been and continue to be damaged by Defendants' activities and conduct. Defendants have profited thereby and, unless enjoined, Plaintiffs' business, goodwill and reputation will continue to suffer irreparable injury, which cannot be adequately calculated or compensated solely by money damages.

96. Defendants' acts complained of herein were done willfully with knowledge of Plaintiffs' rights.

97. Plaintiffs have no remedy at law. Defendants actions have caused and will continue to cause irreparable harm and damage to Plaintiffs.

COUNT I
(Trademark Infringement, 15 U.S.C. §1114)

98. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

99. Defendants' use of Plaintiffs' TOMMEE TIPPEE Marks and the domain names tommeetippeenubycups.com and tommeetippeenubycups.co.uk is likely to cause confusion or mistake or deceive the general public into believing that Defendants and Defendants' goods

originate with, are associated or affiliated with, or are sponsored with or by Plaintiffs thereby causing injury to Plaintiffs in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

COUNT II
(Unfair Competition, 15 U.S.C. §1125)

100. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

101. Defendants' applications to register DURA SPOUT and SIP IT UP, if they mature to registration or if Defendants' use the marks, would be likely to cause confusion or mistake or deceive the general public into believing that Defendants and their goods originate with, are associated or affiliated with, or are sponsored by Plaintiffs thereby causing injury to Plaintiffs in violation of Section 43 of the Lanham Act, 15 U.S.C. §1125.

102. Defendants' applications to register DURA SPOUT and SIP IT UP are bad faith attempts to block Plaintiffs' expansion, and to interfere with Plaintiffs' use, in the United States of their DURA SPOUT and TIP IT UP trademarks.

103. Defendants' application to register SPORTSTER is a bad faith attempt to block Plaintiffs' expansion into the United States.

104. Plaintiffs request a declaration from this Court that Plaintiffs' rights have been or will be violated as described herein and an order (i) requiring Defendants to expressly abandon federal trademark Application Serial Nos. 85/003,453, 85/003,408 and 85/003,358 and (ii) banning Defendants from using or applying to register such marks.

COUNT III
(Trade Dress Infringement, 15 U.S.C. §1125)

105. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

106. Defendants' use of Plaintiffs' CLOSER TO NATURE Trade Dress is likely to cause confusion or mistake or deceive the general public into believing that Defendants' and Defendants' goods originate with, are associated or affiliated with, or are sponsored by Plaintiffs thereby causing injury to Plaintiffs in violation of Section 43 of the Lanham Act, 15 U.S.C. §1125.

COUNT IV
(Unfair Competition, False Designation of Origin, 15 U.S.C. §1125)

107. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

108. Defendants are attempting to profit from the Plaintiffs' goodwill in Plaintiffs' IP.

109. Defendants are attempting to falsely suggest an association with, or to trade on the goodwill of Plaintiffs' IP.

110. Defendants' actions constitute false representation and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

COUNT V
(Cybersquatting, 15 U.S.C. §1125(d)(1))

111. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

112. Jackel is the owner of the distinctive TOMMEE TIPPEE Marks and Mayborn is the exclusive licensee in the United States of the same. These marks were distinctive at the time the tommeetippeenubycups.com and tommeetippeenubycups.co.uk domain names were registered.

113. Upon information and belief, Defendants' have authorized or consented to the registration and maintenance of the tommeetippeenubycups.com and tommeetippeenubycups.co.uk domain names with a bad faith intent to profit from use of the TOMMEE TIPPEE Marks.

114. The tommeetippeenubycups.com and tommeetippeenubycups.co.uk domain names are confusingly similar to the TOMMEE TIPPEE Marks.

115. Defendants' actions constitute cybersquatting on the domain names tommeetippeenubycups.com and tommeetippeenubycups.co.uk in violation of Section 43(a) of the Trademark Act (15 U.S.C. §1125(d)) (The Anticybersquatting Consumer Protection Act) and in violation of Jackel's rights in its TOMMEE TIPPEE Marks.

COUNT VI

(Design Patent Infringement, 35 U.S.C. § 281)

116. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein

117. Defendants' actions infringe Plaintiff's United States Patent Registration No. D599,026.

COUNT VII

(State Unfair Competition, Connecticut General Statutes § 42-110a, et seq.)

118. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

119. Defendants' actions offend public policy and are unfair.

120. Defendants' actions are immoral, unethical, oppressive or unscrupulous.

121. Defendants' actions have caused and continue to cause substantial injury to Plaintiffs, consumers and others in the baby feeding product industry.

122. Defendants' actions constitute unfair competition in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. 42-110a, et seq.

COUNT VIII
(Unjust Enrichment)

123. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

124. Defendants' acts complained of herein constitute unjust enrichment of Defendants at Plaintiffs' expense in violation of the common law of the State of Connecticut.

COUNT IX
(Common Law Unfair Competition)

125. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

126. Defendants' actions constitute unfair competition under the common law of the State of Connecticut.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to enter:

- (a) Judgment for Plaintiffs against Defendants on all of the foregoing;
- (b) An order requiring Defendants to transfer the tommeetippeenubycups.com and tommeetippeenubycups.co.uk domain names to Plaintiffs;
- (c) A declaration that the trademark applications for DURA SPOUT, SIP IT UP and SPORTSTER, violate Plaintiffs' rights and shall be expressly abandoned;
- (d) An order requiring Admar to expressly abandon its applications, Serial Nos. 85/003,453, 85/003,408, and 85/003,358 filed with the United States Patent and Trademark Office to register DURA SPOUT, SIP IT UP and SPORTSTER;

(e) A permanent injunction restraining Defendants, and their officers, directors, agents, servants, representatives, employees, parents, subsidiaries, related companies, licensees, successors, assigns, and all persons acting in active concert or participation with Defendants, or on behalf of Defendants, from doing, causing, aiding or abetting from:

- i. using or applying to register in any manner the designations TOMMEE TIPPEE, DURA SPOUT, TIP IT UP, SIP IT UP, SPORTSTER, or any other designation or mark that is identical to or confusingly similar to any of the TOMMEE TIPPEE Marks, DURA SPOUT Mark, TIP IT UP Mark or SPORTSTER Mark in any font, style, or typeface, in association with any goods or services;
- ii. using or applying to register in any manner the designations TOMMEE TIPPEE, DURA SPOUT, TIP IT UP, SIP IT UP, SPORTSTER, or any other designation or mark that is identical to or confusingly similar to any of the TOMMEE TIPPEE Marks, DURA SPOUT Mark, TIP IT UP Mark or SPORTSTER Mark in any font, style, or typeface, as a domain name, directory name, or other computer address, in buried code or in metatags, in connection with the retrieval of data or information or on other goods or services;
- iii. using or applying to register in any manner the TOMMEE TIPPEE Marks, DURA SPOUT Mark, TIP IT UP Mark, SIP IT UP or SPORTSTER Mark in connection with any goods or services in such a manner that is likely to cause confusion or create the erroneous belief that Defendants or their

- goods or services are authorized by, sponsored by, licensed by, approved by, or in some way associated with Plaintiffs;
- iv. using or applying to register in any manner the CLOSER TO NATURE Trade Dress in such a manner that is likely to cause confusion or create the erroneous belief that Defendants or their goods or services are authorized by, sponsored by, licensed by, approved by, or in some way associated with Plaintiffs;
 - v. making, using, offering to sell, selling, manufacturing, distributing, marketing, advertising or promoting any pacifier that is substantially similar to the CTN Pure Pacifier, including Defendants' infringing pacifiers identified herein;
 - vi. copying any of Plaintiffs' goods or services;
 - vii. otherwise engaging in conduct that tends to falsely represent, or is likely to confuse, mislead or deceive purchasers or potential purchasers or members of the public to believe that Defendants' products and Defendants are in some way connected with Plaintiffs or are sponsored, approved, or licensed by Plaintiffs or Defendants' products or are in some way connected or affiliated with Plaintiffs or Plaintiffs' goods or services;
 - viii. using any reproduction, copy or colorable imitation of any of Plaintiffs' IP in connection with the publicity, promotion, internet communications including websites, sale or advertising of products manufactured, received, acquired, imported, shipped, purchased, sold, offered for sale or distributed by Defendants;

- ix. affixing, applying, annexing or using in connection with the manufacturing, advertising, receiving, acquiring, importing, shipping, purchasing, selling, offering for sale or distributing any goods, a false description or representation including words or other symbols tending to falsely describe or represent such goods as being Plaintiffs' goods and from offering such goods in commerce;
- x. further infringing Plaintiffs' IP and damaging Plaintiffs goodwill;
- xi. otherwise engaging in any other acts or conduct that would cause consumers to believe erroneously that Plaintiffs' goods or services are somehow sponsored by, authorized by, licensed by, approved by, or in any other way associated with Plaintiffs;
- xii. otherwise unfairly competing with Plaintiffs in any manner; and
- xiii. assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in paragraphs (i) through (xii), above.

(f) An order requiring Defendants to deliver up for destruction all products, packaging, displays, advertising materials, promotional materials, electronic information and any other materials that infringe Plaintiffs' IP or use the items complained of herein.

(g) Defendants be ordered to file with this Court and to serve upon Plaintiffs' counsel within thirty (30) days after the entry and service on Defendants of each injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

(h) An accounting be directed to determine Defendants' profits resulting from their activities and that such profits be paid over to Plaintiffs, increased as the Court finds to be justified under the circumstances of this case;

(i) Plaintiffs recover all damages sustained as a result of Defendants' activities and that said damages be trebled;

(j) Plaintiffs recover punitive damages and the costs of this action, including reasonable attorneys' fees, together with prejudgment and post-judgment interest; and

(k) Plaintiffs recover such other and further relief as the Court deems just and proper.

Respectfully submitted,

MAYBORN USA, INC. and
JACKEL INTERNATIONAL, LIMITED

Dated: October 19, 2010

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial Nos.: 85/003,453, 85/003,408, 85/003,358

By: Admar International Inc.

Filed: March 31, 2010

Published in the Official Gazette on August 24, 2010

Marks: SIP IT UP, DURA SPOUT, SPORTSTER

Jackel International Limited,

Opposer,

v.

Admar International Inc.,

Applicant.

Opposition Nos.:

91196598, 91196597, 91196599

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Motion for Suspension is being served on Applicant in these proceedings by mailing said copy via First Class Mail on October 19, 2010, postage prepaid to:

Joe D. Guerriero, Esquire
Admar International Inc.
309 Rehoboth Ave
Rehoboth Beach, Delaware 19971-3127



Joshua C. Foster